

area within BellSouth's central office. Rates for a BellSouth security escort are assessed in one-half (1/2) hour increments according to the schedule appended hereto as Exhibit A.

**E. Rate "True-Up".** The Parties agree that the interim prices reflected herein shall be "trued-up" (up or down) based on final prices either determined by further agreement or by final order, including any appeals, in a proceeding involving BellSouth before the regulatory authority for the State in which the services are being performed or any other body having jurisdiction over this agreement (hereinafter "Commission"). Under the "true-up" process, the interim price for each service shall be multiplied by the volume of that service purchased to arrive at the total interim amount paid for that service ("Total Interim Price"). The final price for that service shall be multiplied by the volume purchased to arrive at the total final amount due ("Total Final Price"). The Total Interim Price shall be compared with the Total Final Price. If the Total Final Price is more than the Total Interim Price, Interconnector shall pay the difference to BellSouth. If the Total Final Price is less than the Total Interim Price, BellSouth shall pay the difference to Interconnector. Each party shall keep its own records upon which a "true-up" can be based and any final payment from one party to the other shall be in an amount agreed upon by the Parties based on such records. In the event of any disagreement as between the records or the Parties regarding the amount of such "true-up," the Parties agree that the Commission shall be called upon to resolve such differences.

**F. Other.** Payment of all other charges under this Agreement shall be due thirty (30) days after receipt of the bill (payment due date). Interconnector will pay a late payment charge of one and one-half percent (1-1/2%) assessed monthly on any balance which remains unpaid after the payment due date.

## **VI. INSURANCE**

**A.** Interconnector shall, at its sole cost and expense, procure, maintain, and keep in force insurance as specified in this Article VI and underwritten by insurance companies licensed to do business in the states contained in Exhibit B attached hereto and having a BEST Insurance Rating of B ++ X (B ++ ten) or may satisfy the insurance obligations of this Article through an appropriate self-insurance program.

**B.** Interconnector shall maintain the following specific coverages:

1. Commercial General Liability coverage or its equivalent in a self-insurance program in the amount of ten million dollars (\$10,000,000.00) or a combination of Commercial General Liability and Excess/Umbrella coverage totaling not less than ten million dollars (\$10,000,000.00). BellSouth shall be named as an ADDITIONAL INSURED on ALL applicable policies as specified herein.

2. Statutory Workers Compensation coverage and Employers Liability coverage or its equivalent in a self-insurance program in the amount of one hundred thousand dollars (\$100,000.00) each accident, one hundred thousand dollars (\$100,000.00) each employee by disease, and five hundred thousand dollars (\$500,000.00) policy limit by disease.

3. Interconnector may elect to purchase business interruption and contingent business interruption insurance, having been advised that BellSouth assumes no liability for loss of profit or revenues should an interruption of service occur.

C. The limits set forth in Article VI.B above may be increased by BellSouth from time to time during the term of this Agreement upon thirty (30) days notice to Interconnector to at least such minimum limits as shall then be customary with respect to comparable occupancy of BellSouth structures.

D. All policies purchased by Interconnector shall be deemed to be primary and not contributing to or in excess of any similar coverage purchased by BellSouth. All insurance or the appropriate self-insurance program must be in effect on or before the date equipment is delivered to BellSouth's Central Office and shall remain in effect for the term of this Agreement or until all Interconnector's property has been removed from BellSouth's Central Office, whichever period is longer. If Interconnector fails to maintain required coverages, BellSouth may pay the premiums thereon and seek reimbursement of same from Interconnector. If Interconnector fails to maintain the appropriate self-insurance program, Interconnector must purchase the commercial insurance at the coverage set forth in this section.

E. Interconnector shall submit certificates of insurance reflecting the coverages required pursuant to this Section a minimum of ten (10) days prior to the

commencement of any work in the Collocation Space. Interconnector shall arrange for BellSouth to receive thirty (30) days advance notice of cancellation from Interconnector's insurance company. Notice of cancellation should be forwarded to:

**BellSouth Telecommunications, Inc.**

Attn.: Insurance Coordinator  
3535 Colonnade Parkway, S9A1  
Birmingham, Alabama 35243

**F. Interconnector must conform to recommendations made by BellSouth's fire insurance company to the extent BellSouth has agreed to, or shall hereafter agree to, such recommendations.**

**G. Failure to comply with the provisions of this Section will be deemed a material breach of this Agreement.**

## **VII. MECHANICS LIENS**

If any mechanics lien or other liens shall be filed against property of BellSouth, or any improvement thereon by reason of or arising out of any labor or materials furnished or alleged to have been furnished or to be furnished to or for Interconnector or by reason of any changes, or additions to BellSouth property made at the request or under the direction of the Interconnector, Interconnector shall, within thirty (30) days after receipt of written notice from BellSouth either pay such lien or cause the same to be bonded off BellSouth's property in the manner provided by law. Interconnector shall also defend on behalf of BellSouth, at Interconnector's sole cost and expense, any action, suit or proceeding which may be brought for the enforcement of such liens and Interconnector shall pay any damage and discharge any judgment entered thereon.

## **VIII. INSPECTIONS**

BellSouth shall conduct an inspection of Interconnector's equipment and facilities in the Collocation Space(s) prior to the activation of facilities between Interconnector's equipment and equipment of BellSouth. BellSouth may conduct an inspection if Interconnector adds equipment and may otherwise conduct routine inspections at reasonable intervals mutually agreed upon by the parties. BellSouth shall provide Interconnector with a minimum of forty-eight (48) hours or two (2) business days, whichever is

greater, advance notice of all such inspections.

## **IX. SECURITY**

Only BellSouth employees, BellSouth certified vendors and authorized employees or agents of Interconnector will be permitted in the BellSouth Central Office. Interconnector shall provide its employees and agents with picture identification which must be worn and visible at all times while in the Collocation Space or other areas in or around the Central Office. BellSouth may refuse entry to any person who fails to display the identification required by this section.

## **X. INDEMNITY / LIMITATION OF LIABILITY**

**A.** Interconnector shall be liable for any damage to property, equipment or facilities or injury to person caused by the activities of Interconnector, its agents or employees pursuant to, or in furtherance of, rights granted under this Agreement. Interconnector shall indemnify and hold BellSouth harmless from and against any judgments, fees, costs or other expenses resulting or claimed to result from such activities by Interconnector, its agents or employees.

**B.** BellSouth shall not be liable to Interconnector for any interruption of Interconnector's service or for interference with the operation of Interconnector's communications facilities, or for any special, indirect, incidental or consequential damages arising in any manner, including BellSouth's negligence, out of the use of the Collocation Space(s) and Interconnector shall indemnify, defend and hold BellSouth harmless from and against any and all claims, demands, causes of action, costs and reasonable attorneys' fees with respect to such special, indirect, incidental or consequential damages.

## **XI. PUBLICITY**

Interconnector agrees to submit to BellSouth all advertising, sales promotion, press releases, and other publicity matters relating to this Agreement or mentioning or implying the tradenames, logos, trademarks or service marks (hereinafter "Marks") of BellSouth Corporation and/or any of its affiliated companies or language from which the connection of said Marks therewith may be inferred or implied, or mentioning or implying the names of any personnel of

BellSouth Corporation and/or any of its affiliated companies, and Interconnector further agrees not to publish or use such advertising, sales promotions, press releases, or publicity materials without BellSouth's prior written consent.

## **XII. DESTRUCTION OF COLLOCATION SPACE**

In the event a Collocation Space is wholly or partially damaged by fire, windstorm, tornado, flood or by similar causes to such an extent as to be rendered wholly unsuitable for Interconnector's permitted use hereunder, then either party may elect within ten (10) days after such damage, to terminate this Agreement, and if either party shall so elect, by giving the other written notice of termination, both parties shall stand released of and from further liability under the terms hereof. If the Collocation Space shall suffer only minor damage and shall not be rendered wholly unsuitable for Interconnector's permitted use, or is damaged and the option to terminate is not exercised by either party, BellSouth covenants and agrees to proceed promptly without expense to Interconnector, except for improvements not the property of BellSouth, to repair the damage. BellSouth shall have a reasonable time within which to rebuild or make any repairs, and such rebuilding and repairing shall be subject to delays caused by storms, shortages of labor and materials, government regulations, strikes, walkouts, and causes beyond the control of BellSouth, which causes shall not be construed as limiting factors, but as exemplary only. Where allowed and where practical in the sole judgment of BellSouth, Interconnector may erect a temporary facility while BellSouth rebuilds or makes repairs. In all cases where the Collocation Space shall be rebuilt or repaired, Interconnector shall be entitled to an equitable abatement of rent and other charges, depending upon the unsuitability of the Collocation Space for Interconnector's permitted use, until such Collocation Space is fully repaired and restored and Interconnector's equipment installed therein (but in no event later than thirty (30) days after the Collocation Space is fully repaired and restored).

## **XIII. EMINENT DOMAIN**

If the whole of a Collocation Space shall be taken by any public authority under the power of eminent domain, then this Agreement shall terminate as of the day possession shall be taken by such public authority and rent and other charges for the Collocation Space shall be paid up to that day with proportionate refund by

BellSouth of such rent and charges as may have been paid in advance for a period subsequent to the date of the taking. If any part of the Collocation Space shall be taken under eminent domain, BellSouth and Interconnector shall each have the right to terminate this Agreement and declare the same null and void, by written notice of such intention to the other party within ten (10 ) days after such taking.

#### ***XIV.FORCE MAJEURE***

Neither party shall be in default by reason of any failure in performance of this Agreement, in accordance with its terms and conditions, if such failure arises out of causes beyond the control of the nonperforming party including, but not restricted to, acts of God, acts of government, insurrections, fires, floods, accidents, epidemics, quarantines, restrictions, strikes, freight embargoes, inability to secure raw materials or transportation facilities, acts or omissions of carriers or any and all other causes beyond the party's control.

#### ***XV.ASSIGNMENT***

Interconnector acknowledges that this Agreement does not convey any right, title or interest in the Central Office to Interconnector. Interconnector may not sublet its rights under this Agreement, nor shall it allow a third party to use or occupy the Collocation Space at any time or from time to time without the prior written consent, and at the sole discretion, of BellSouth. This Agreement is not assignable by either party without the prior written consent of the other party, and any attempt to assign any of the rights, duties or obligations of this Agreement without such consent is void. Notwithstanding the foregoing, either party may assign any rights, duties or obligations of this Agreement to a parent, subsidiary or affiliate without the consent of the other party.

#### ***XVI.NONEXCLUSIVITY***

Interconnector understands that this Agreement is not exclusive and that BellSouth may enter into similar agreements with other parties. Assignment of space pursuant to all such agreements shall be determined by space availability and made on a first come, first served basis.

**XVII.NO IMPLIED WAIVER**

No consent or waiver by either party to or of any breach of any covenant, term, condition, provision or duty of the other party under this Agreement shall be construed as a consent to or waiver of any other breach of the same or any other covenant, term, condition, provision or duty. No such consent or waiver shall be valid unless in writing and signed by the party granting such consent or waiver.

**XVIII.NOTICES**

Except as otherwise provided herein, any notices or demands that are required by law or under the terms of this Agreement shall be given or made by Interconnector or BellSouth in writing and shall be given by hand delivery, or by certified or registered mail, and addressed to the parties as follows:

**To BellSouth:**

BellSouth  
Telecommunications, Inc..  
675 W. Peachtree Street,  
34G57  
Atlanta, Georgia 30375  
Attn: Linda Walker  
Attn: Dennis King, C.P.M.

**To Interconnector:**

BellSouth Long Distance, Inc  
32 Perimeter Center East  
Atlanta, Georgia 30346

Such notices shall be deemed to have been given in the case of certified or registered mail when deposited in the United States mail with postage prepaid.

**XIX.RESOLUTION OF DISPUTES**

Except as otherwise state in this Agreement, the Parties agree that if any dispute arises as to the interpretation of any provision of this Agreement or as to the proper implementation of this Agreement, the parties will petition the applicable state

Public Service Commission for a resolution of the dispute. However, each party reserves any rights it may have to seek judicial review of any ruling made by the Public Service Commission concerning this Agreement.

## ***XX. SECTION HEADINGS***

The section headings used herein are for convenience only, and shall not be deemed to constitute integral provisions of this Agreement.

## ***XXI. AUTHORITY***

Each of the parties hereto warrants to the other that the person or persons executing this Agreement on behalf of such party has the full right, power and authority to enter into and execute this Agreement on such party's behalf and that no consent from any other person or entity is required as a condition precedent to the legal effect of this Agreement.

## ***XXII. REVIEW OF AGREEMENT***

The parties acknowledge that each has had an opportunity to review and negotiate this Agreement and has executed this Agreement only after such review and negotiation. The parties further agree that this Agreement shall be deemed to have been drafted by both Licensor and Licensee and the terms and conditions contained herein shall not be construed any more strictly against one party or the other.

## ***XXIII. ENTIRE AGREEMENT***

This Agreement contains the full understanding of the parties (superseding all prior or contemporaneous correspondence between the parties) and shall constitute the entire agreement between BellSouth and Interconnector and may not be modified or amended other than by a written instrument signed by



both parties. If any conflict arises between the terms and conditions contained in this Agreement and those contained in a filed tariff, the terms and conditions of the tariff shall control.

**IN WITNESS WHEREOF**, the parties have executed this Agreement by their duly authorized representatives in one or more counterparts, each of which shall constitute an original, on the day and year first above written.

**BELLSOUTH  
TELECOMMUNICATIONS, INC.**

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Print or Type Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**BELLSOUTH LONG DISTANCE, INC.**

\_\_\_\_\_  
Authorized Signature

**W. F. Reddersen**

Print or Type Name

**Group President - Long Distance and  
Video Services**

Title

\_\_\_\_\_  
Date

## **EXHIBIT A**

### **Schedule of Rates and Charges**

<b>Rate Element Description</b>	<b>Type of Charge</b>	<b>Charge</b>
Application Fee	NRC(per Arrangement, per C.O.)	\$3,850.00
Subsequent Application Fee	NRC (per Arrangement,	\$1,600.00

(Note 1)	per C.O.)	
Space Preparation Fee (Note 2)	NRC (per Arrangement, per C.O.)	ICB
Space Enclosure Construction Fee (Note 2)	NRC (per 100 square feet)	\$4,500.00
Additional Engineering Fee (Note 3)	NRC	ICB
Cable Installation	NRC (per entrance cable)	\$2,750.00
Floor Space Zone A	RC (per square foot)	\$7.50
Zone B	RC (per square foot)	\$6.75
Power	RC (per amp)	\$5.00
Cable Support structure	RC (per entrance cable)	\$13.35
	RC (per cross-connect)	
	RC (per cross-connect)	
	RC (per cross-connect)	
	RC (per cross-connect)	
Cross-Connects		
2-wire	NRC (first cross-connect)	\$0.30
4-wire	NRC (first cross-connect)	\$0.50
DS1	NRC (first cross-connect)	\$8.00
DS3	NRC (first cross-connect)	\$72.00
2-wire	NRC (first cross-connect)	\$19.20
4-wire	NRC (first cross-connect)	\$19.20
DS1	NRC (first cross-connect)	\$155.00
DS3	NRC (first cross-connect)	\$155.00
2-wire	NRC (each additional cross-connect)	\$19.20
4-wire	NRC (each additional cross-connect)	\$19.20
DS1	NRC (each additional cross-connect)	\$27.00
DS3	NRC (each additional cross-connect)	\$27.00
	NRC (each additional cross-connect)	
	NRC (each additional cross-connect)	
	NRC (each additional cross-connect)	
	NRC (each additional cross-connect)	
	RC (per cross-connect)	
POT Bay 2-wire	RC (per cross-connect)	\$0.40
4-wire	RC (per cross-connect)	\$1.20
DS1	RC (per cross-connect)	\$1.20
DS3	RC (per cross-connect)	\$8.00

	RC (per cross-connect)	
Additional Security Access Cards	NRC-ICB (each)	\$10.00

EXHIBIT A Page 2 of 3 Schedule of Rates and Charges (cont.) Rate Element  
 Description Type of Charge Charge  
 Security Escort Basic - first half hour  
 NRC-ICB \$41.00 Overtime - first half hour  
 NRC-ICB \$48.00 Premium - first half hour  
 NRC-ICB \$55.00 Basic - additional half hour  
 NRC-ICB \$25.00 Overtime - additional half hour  
 NRC-ICB \$30.00 Premium - additional half hour  
 NRC-ICB \$35.00

### Notes

NRC:Non-recurring Charge - one-time charge

RC:Recurring Charge - charged monthly

ICB:Individual Case Basis - one-time charge

As stated in Article IV.H, if Interconnector cancels its order for the Collocation Space(s), Interconnector will reimburse BellSouth for any expenses incurred up to the date that written notice of the cancellation is received. In no event will the level of reimbursement under this paragraph exceed the maximum amount Interconnector would have otherwise paid for work undertaken by BellSouth if no cancellation of the order had occurred.

(1)Subsequent Application Fee. BellSouth requires the submission of an Application Fee for modifications to an existing arrangement. However, when the modifications do not require BellSouth to expend capital (e.g., additional space or power requirements, BST termination/cross-connect equipment, etc.), BellSouth will assess the Subsequent Application Fee.

(2)Space Preparation Fee. The Space Preparation Fee is a one-time fee, assessed per arrangement, per location. It covers costs associated with the shared physical collocation area within a central office, and includes survey, engineering, design and building modification costs. BellSouth will prorate the total shared space preparation costs among all collocators at that location based on the number of square footage requested. This charge may vary dependent on the location and the type of arrangement requested.

Space Enclosure Construction Fee. The Space Enclosure Construction Fee is a one-time fee, assessed per enclosure, per location. It covers the costs associated with providing an optional equipment arrangement enclosure, and includes architectural and engineering fees, materials, and installation costs. This fee is assessed in 50 square foot increments, with a minimum space enclosure size of 100 square feet. Interconnector may, at its option, arrange with a BellSouth certified contractor to construct the space enclosure in accordance with BellSouth's guidelines and specifications. Such contractor shall directly bill Interconnector for activities associated with the space enclosure construction, and this fee shall not be assessed.

(3)Additional Engineering Fee. BellSouth's engineering and other labor time associated with

establishing the Physical Collocation Arrangement will be billed as Additional Engineering charges, under provisions in BellSouth's F.C. C. Number 1 Tariff, Sections 13.1 and 13.2. An estimate of the Additional Engineering charges will be provided by BellSouth in the Application Response.

**EXHIBIT B****Bona Fide Physical Collocation Arrangements**

**Central Office Name:**Courtland Street Office  
**Central Office CLLI Code:**ATLNGACS  
**City:**Atlanta  
**State:**Georgia  
**Date of Bona Fide Firm Order:**

**Central Office Name:**Orlando Main Office  
**Central Office CLLI Code:**ORLDFLMA  
**City:**Orlando  
**State:**Florida  
**Date of Bona Fide Firm Order:**

**Central Office Name:**New Orleans Main Office  
**Central Office CLLI Code:**NWORLAMA  
**City:**New Orleans  
**State:**Louisiana  
**Date of Bona Fide Firm Order:**

**Central Office Name:**Caldwell Street  
**Central Office CLLI Code:**CHRLNCCA  
**City:**Charlotte  
**State:**North Carolina  
**Date of Bona Fide Firm Order:**

**Central Office Name:**  
**Central Office CLLI Code:**  
**City:**  
**State:**  
**Date of Bona Fide Firm Order:**

**Central Office Name:**  
**Central Office CLLI Code:**  
**City:**  
**State:**  
**Date of Bona Fide Firm Order:**

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fill

Transactions



Transactions Between  
BellSouth  
 fill Telecommunications,  
Inc. and BellSouth Long  
Distance Inc.

Filings and Positions

C. Both Parties acknowledge that this Agreement contains confidential information which may be considered proprietary by either or both Parties, and, except to the extent otherwise provided in this Agreement, agree to limit distribution of the Agreement to those individuals in their respective organizations, and in their affiliated companies, with a need to know the contents of the Agreement. Either Party may disclose or provide copies of all or part of this Agreement to meet the requirements of a court, regulatory body or government agency having jurisdiction over the Party from whom the copies are being requested, under the condition that the providing Party seeks commercial confidential status of the Agreement to the extent such designation can be secured.

## 12. TRADEMARKS, TRADE NAMES AND SERVICE MARKS

A. The Parties agree that use of the BellSouth corporate trade names, logos, trademarks, or service marks are governed by rules, terms and conditions as established from time to time by BellSouth corporation. BSLD agrees to submit to BST all advertising, sales promotion, press releases and other publicity matters relating to the Agreement or the Services performed by BST under the State Tariffs or this Agreement wherein the corporate or trade names, logos, trademarks or service marks of BST, its parent or any of its affiliated companies are mentioned or language from which the connection of said names or trademarks therewith may be inferred or implied; and BSLD further agrees not to publish or use such advertising, sales promotions, press releases or publicity matters without BST's prior written approval. Such advertising, sales promotions, press releases, or publicity matters shall be submitted to BST at least 30 days before use. If BST does not respond within 30 days, BSLD may consider the Material approved.

B. No licenses, express or implied, are granted by either Party to the other except as provided hereunder.

## 13. SOFTWARE

BST or its contractors or agents may develop specifications, drawings, documentation, concepts, methods, techniques, processes, adaptations and ideas including, but not limited to, software (hereinafter "Software") for the purpose of rendering Services to BSLD under this Agreement. Unless otherwise agreed by authorized representatives of the Parties, in writing, in advance of the creation of the Software, BST shall own all right, title and interest, including copyright, in and to the Software.

## 14. ASSIGNMENT, TRANSFER, OR GRANT OF SECURITY INTEREST IN

Neither Party shall assign or transfer the use of Services provided under this Agreement, grant a security interest in, or

otherwise encumber any right, obligation or duty, in whole or in part, or any other interest hereunder, without the written consent of the other Party. Either Party shall have the right to make such an assignment to an affiliate of BellSouth upon 30 days advance written notice to the other Party.

The Party requesting the assignment, transfer, or grant of security interest in will provide the other Party all information reasonably requested to assure that the assignee, transferee, or investor:

- Qualifies;
- Accepts all the terms and conditions of this Agreement;
- Can establish credit and prove that they are able to pay the amounts due; and/or
- Does not interrupt or relocate Services when re-assigned or transferred.

The consenting Party will respond to the requesting Party, in writing, within 30 calendar days from the date it receives the requesting Party's written notification and required information.

Even with completion of the assignment or transfer of Services to another, the requesting Party will continue to be responsible to the consenting Party, along with the assignee or transferee, for all duties, liabilities, and any obligations set forth in this Agreement.

#### **15. AMENDMENTS; WAIVERS**

This Agreement or any part thereof or any attachments hereto may be modified or additional provisions may be added by written amendment signed by or on behalf of both Parties. No such amendments or waiver and no consent to any default under this Agreement shall be effective unless the same shall be in writing and signed by or on behalf of the Party against whom such amendment, waiver or consent is claimed. In addition, failure to strictly enforce any term, right or condition of this Agreement shall not be construed as a waiver of such term, right or condition.

#### **16. DENIAL OF END-USER SERVICE AUTHORIZATION**

BSLD authorizes BST to disconnect end-user services for non-payment in accordance with established BST procedures and the rules and regulations of appropriate regulatory agencies.

#### **17. AUTHORIZATION TO CONDUCT BUSINESS**

A. BSLD and Clients shall comply with the provisions of all applicable federal, state, county and local laws, ordinances, orders, tariffs, regulations and codes. BSLD and Clients shall jointly and severally indemnify BST for, and defend BST against, any loss or damage sustained because of BSLD and/or Clients' non-compliance except in the case of gross negligence on the part of BST.

B. BSLD shall obtain and keep current federal, state, and local licenses or approvals that may be required to carry the traffic or otherwise conduct the business for which BST is billing hereunder, and shall require Clients to obtain and keep current all such licenses or approvals. BSLD shall obtain and keep current all federal, state, and local licenses or approvals and comply with other such regulations as may be applicable for BSLD to merge messages for Clients and serve as a data Host

or otherwise conduct business which is related to BST billing hereunder. Such other business specifically includes, but is not limited to, operator services. BSLD is solely and fully responsible to BST for any damages incurred due to breach of this obligation. COPIES OF ALL REQUIRED CERTIFICATIONS AND APPROVALS, IN THE APPLICABLE JURISDICTIONS, OBTAINED BY BSLD AND CLIENTS SHALL BE FURNISHED TO BST BEFORE THE IMPLEMENTATION OF THIS AGREEMENT OR IF ISSUED DURING THE TERM OF THIS AGREEMENT, WITHIN 30 DAYS OF ISSUANCE. IF BSLD ENTERS INTO AN AGREEMENT WITH CLIENT DURING THE TERM OF THIS AGREEMENT, ALL REQUIRED LICENSES AND APPROVALS OBTAINED BY CLIENT SHALL BE FURNISHED TO BST WITHIN 30 DAYS OF THE EXECUTION OF SUCH AGREEMENT.

C. BST shall obtain and keep current all federal, state and local licenses or approvals and comply with other such regulations as may be applicable to the Services performed by BST hereunder.

D. Warranty: BSLD warrants that it has full authority to enter into the terms and conditions herein on its own behalf and on behalf of its Clients.

#### 18. INDIVIDUAL MEMBER OBLIGATION

A. To the extent any obligation herein is agreed upon by BSLD, that obligation shall be retained by BSLD and is also extended automatically to each Client. Furthermore, with respect to any action taken by or on behalf of BSLD and/or an individual Client by BST, BSLD and Client shall jointly and severally indemnify and hold BST harmless unless such action stemmed from gross negligence on the part of BST.

B. Warranty: BSLD warrants that it has full authority to enter into the terms and conditions specified above. IN THE EVENT AN AGENCY AGREEMENT BETWEEN BSLD AND CLIENT IS TERMINATED, BSLD SHALL IMMEDIATELY NOTIFY BST.

#### 19. LIST OF CLIENTS AND PROVISION OF CLIENT INFORMATION AND AGENCY AGREEMENT

It shall be the responsibility of BSLD to provide BST with a current list of its Clients, which shall include, but not be limited to, the following: Client's company name, business mailing address, name of person designated as Client's contact person, telephone number, and fax number. Any change in the above described information shall be provided to BST within 30 days of such change. In addition, BSLD shall provide BST a copy of BSLD's current agency agreement with each Client during the term of this Agreement.

#### 20. PROVISION OF CLIENT INFORMATION TO END USERS

BSLD agrees that if a dispute or inquiry is escalated and, as a result, a judicial and/or regulatory agent, or end user requests BSLD and/or Client's telephone number, BST shall provide.

#### 21. NOTICES AND DEMANDS

A. Except as otherwise provided under this Agreement or in the attachments hereto, all notices, demands, or requests which may be given by one Party to the other Party shall be in writing

and shall be deemed to have been duly given on the date delivered in person or delivered to the correct address (as set forth below) by U.S. Mail, postage prepaid, overnight courier or facsimile to the appropriate Party:

BST:

BellSouth Telecommunications, Inc.  
34G57  
675 West Peachtree Street  
Atlanta, Georgia 30375  
Fax #: 404-529-0075

BSLD:

Senior Director - Carrier Relations  
BellSouth Long Distance, Inc.  
32 Perimeter Center  
Atlanta, Georgia 30346  
Fax #: 770-352-3181

B. For notifications with respect to tax matters, all notices, demands, or requests should be sent to:

BellSouth Corporation  
Director -- Other Taxes  
16J07 Campanile, 1155 Peachtree Street  
Atlanta, Georgia 30309  
Fax #: 404-249-5905

C. The above addresses may be changed by written notice given by such Party to the other Party pursuant to this Section.

## 22. NO THIRD-PARTY BENEFICIARIES

This Agreement shall not provide any person not a Party to this Agreement with any remedy, claim, liability, reimbursement, cause of action or other right in excess of those existing pursuant to this Agreement.

## 23. TERMINATION OF AGREEMENT UPON EVENT OF DEFAULT

Upon the occurrence of an event of default (as hereinafter defined) by a Party, and so long as such event of default shall be continuing, the other Party may elect to give notice that this Agreement is terminated and, if Party elects, proceed by appropriate court action, either at law or in equity, to recover damages for the default thereof. The occurrence of any of the following shall constitute an event of default:

1. Either Party fails to pay any amounts due under this Agreement and such failure to pay continues for more than 30 days after written notice from the other Party.
2. Any representation or warranty made by either Party in this Agreement or in any report, certificate, financial statement or other statement furnished pursuant to the provisions of this Agreement or otherwise, proves to be false or misleading in any material respect as of the date on which the same was made.
3. BSLD fails to successfully complete testing requirements of BST and successfully implement the Services governed by this Agreement within six months of signing this Agreement; or BSLD fails to utilize the Services governed by this Agreement for a consecutive period of six months.



4. Either Party fails in any material respect to duly observe or perform any covenant, condition or agreement made by it in this Agreement and continues to fail to do so for a period of 30 days after receipt of written notice thereof.

The foregoing does not represent the sole and exclusive remedy of either Party upon the occurrence of an event of default by either Party.

#### 24. TERMINATION OF AGREEMENT FOR CONVENIENCE

A. In the event that any regulatory actions result in BST's inability to provide Services in accordance with the terms and conditions of this Agreement, either Party may terminate this Agreement in whole or in part specifically relating to any individual Service(s) upon 30 days advance notice, in writing, to the other Party.

B. Either Party may terminate this Agreement, for convenience, before the completion of the initial term, as set forth in . upon 90 days advance notice, in writing, to the other Party. Both Parties shall be responsible for paying any and all outstanding amounts due to the other Party. With respect to BSLD, these amounts may include, but are not limited to, BSLD and CIC/ABEC Clients' unbillables, post-billing adjustments, uncollectibles moneys, and B&C Service charges that occur for a period of 12 months after the termination date of this Agreement. With respect to BST, these amounts may include, but are not limited to, all outstanding net amounts due for BSLD and CIC/ABEC Clients' accounts receivable.

C. Either Party may terminate this Agreement, for convenience, after the initial term, as set forth in 4.A., upon 30 days advance notice, in writing, to the other Party. Both Parties shall be responsible for paying any and all outstanding amounts due to the other Party. With respect to BSLD, these amounts may include, but are not limited to, BSLD and CIC/ABEC Clients' unbillables, post-billing adjustments, uncollectibles moneys, and B&C Service charges that occur for a period of 12 months after the termination date of this Agreement. With respect to BST, these amounts may include, but are not limited to, all outstanding net amounts due for BSLD and CIC/ABEC Clients' accounts receivable.

#### 25. ENTIRE AGREEMENT

The referenced State Tariffs, this principal document, and all exhibits, addendums, and amendments, constitute the entire Agreement between the Parties which supersedes all prior agreements, oral or written representations, statements, negotiations, understandings, proposals and undertakings with respect to the subject matter hereof.

#### 26. OBLIGATIONS SURVIVE TERMINATION

Parties agree that the termination of this Agreement pursuant to any provision or section hereof, or for any other reason, shall not affect or terminate any obligation or liability incurred or assumed by either Party before the effective date of termination of this Agreement, and the provisions of this Agreement shall survive its termination with respect to conclusion of any unresolved matters relating to the Services performed before termination.

**27. SEVERABILITY OF PROVISIONS**

Except as expressly provided in this Agreement, if any part of this Agreement is held or construed to be invalid or unenforceable, the validity of any other Section of this Agreement shall remain in full force and effect to the extent permissible or appropriate in furtherance of the intent of this Agreement.

**28. CONFLICT OF INTEREST**

The terms and conditions contained in Exhibit C, Conflict of Interest, are hereby made a part of this Agreement.

**29. FORCE MAJEURE**

Neither Party shall be held liable for any delay or failure in performance of any part of this Agreement from any cause beyond its control and without its fault or negligence, such as acts of God, acts of civil or military authority, government regulations, embargoes, epidemics, war, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, strikes, power blackouts, volcanic action, other major environmental disturbances, unusually severe weather conditions, inability to secure products or services of other persons or transportation facilities, or acts or omissions of transportation common carriers.

**30. GOVERNING LAW**

Except as otherwise expressly provided in this Agreement, this Agreement shall be deemed to be an Agreement made under the laws of the State of Georgia, and the construction, interpretation and performance of this Agreement and all transactions hereunder shall be governed by the domestic law of such State.

BELLSOUTH TELECOMMUNICATIONS,  
INC.:

Signature:

---

Name of Signer: Joseph M. Baker

Title: Vice President - Sales, Interconnection  
Services

BELLSOUTH LONG DISTANCE, INC.:

Signature:

---

Name of Signer: William J. Reddersen

Title: Group President - Long Distance &  
Video Services

Exhibits

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Transactions

## THE BELL SOUTH TELECOMMUNICATIONS CLEARINGHOUSE OPERATING AGREEMENT FOR THE BILLING & COLLECTION SERVICE PACKAGE

### PRINCIPAL DOCUMENT

Transactions Between  
BellSouth  
Telecommunications  
Inc. and BellSouth Long  
Distance Inc.

Filings and Positions

This Billing & Collection Service Package Agreement (herein referred to as "Agreement") for Clearinghouse Customers is entered into by and between BellSouth Long Distance, Inc. (herein referred to as "BSLD"), a Georgia corporation, and BellSouth Telecommunications, Inc. (herein referred to as "BST"), a Georgia corporation, and is effective as of October 15, 1997.

WHEREAS, BST offers this Billing & Collection Service Package (herein referred to as "Services"), for intrastate services under Section E.8. of the state access service tariffs (herein collectively referred to as "State Tariffs") in BST's operating territory and offers interstate Services under this Agreement; and

WHEREAS, this Agreement and said State Tariffs give general descriptions of interstate and intrastate Services, respectfully, with established rates and charges, but there are also various interstate and intrastate Services for which the rates and charges are developed on an "individual case basis" ("ICB") so that the Services may be tailored to meet BSLD's needs; and

WHEREAS, BSLD desires to purchase BST's Services as a Clearinghouse Customer for the purpose of billing BSLD toll Messages and its Clients Messages;

NOW, THEREFORE, in consideration of the terms and conditions contained herein, BST and BSLD hereby covenant and mutually agree as follows:

#### 1. DEFINITIONS

The definitions contained in the Glossary to Exhibit A shall apply to the entire Agreement.

#### 2. SCOPE OF THIS AGREEMENT

A. This Agreement encompasses the following documents:

1. This principal document which sets forth the terms and conditions for the basic contractual relationship, and for the provisioning of home state and foreign state taxes for BSLD and Clients' Service charges;

2. Exhibit A which sets forth the terms and conditions governing the daily provisioning of Services to BSLD and Clients;
3. Exhibit B which sets forth the rates and charges for Services and Service features as well as interest paid on deposits, claims, and late payment amounts as described in Exhibit A and this principal document;
4. Exhibit C which sets forth the terms and conditions governing 'Conflict of Interest';
5. Exhibit D which sets forth the terms and conditions governing the calling card Mutual Honoring Arrangement between BST, and BSLD and Clients;
6. Appendix A which is the *Reference Guide for the B&C Service Package*; and
7. Any addendum(s) and/or amendment(s) that may be added after the initial effective date of this Agreement.

If there is any conflict between this principal document and the Exhibits, the principal document shall prevail. If there is any conflict between Exhibit A and Exhibit B, Exhibit A shall prevail. If there is any conflict between the documents that make up this Agreement on the initial effective date and any addendum(s) or amendment(s) later incorporated, the addendum(s) and amendment(s) shall prevail.

B. If there is conflict between this Agreement and the BST tariffs, the tariffs shall prevail.

C. It is expressly understood and acknowledged that intrastate Services are provided pursuant to and under the terms and conditions of the State Tariffs in effect.

D. It is also expressly understood and acknowledged that only Messages provided by BSLD and Clients that may be posted to BST end-user accounts shall be covered by this Agreement. Furthermore, BSLD shall not submit Messages to BST if such Messages are not eligible to bill under this Agreement.

E. It is understood by BSLD and BST (herein referred to collectively as "Parties") that judicial or regulatory action may supersede the terms and conditions of this Agreement.

F. This Agreement disallows BSLD and Clients from billing any Pay-Per-Call and Similar (900) Services. At any time during the term of this Agreement BSLD may request the billing of such Services. BST may, at its sole discretion, deny this request. If BST approves the request, BSLD agrees to sign a Pay-Per-Call and Similar (900) Services Addendum, adhere to all regulatory rules and BST policies governing the billing and collection of such Services, and agrees to pay BST the 900 Service Surcharge set forth in the Pay-Per-Call and Similar (900) Services Addendum.

### 3. DETARIFFING OF THE SERVICES

Should it be determined by the appropriate regulatory authorities, that any or all of the intrastate Services should no longer be offered under State Tariffs and provided that it is otherwise permissible, the Parties agree to comply with and continue this Agreement for such intrastate Services under the terms and conditions of this Agreement.

#### 4. TERM OF AGREEMENT

A. BSLD shall purchase Services in accordance with the State Tariffs and this Agreement for an initial term of 12 months, with *Expanded Inquiry Service*, beginning with the effective date of this Agreement.

B. Upon termination of this Agreement by either Party, certain charges as specified in the State Tariffs and this Agreement may be applicable. This Agreement shall continue to apply to orders placed before this Agreement's termination throughout the remainder of the order period.

C. The Parties agree that after the initial 12-month term, this Agreement shall continue in full force and effect, until notice of termination is given as provided in Sections 23 & 24 or a new Agreement between the Parties becomes effective.

#### 5. TRIAL OF SPECIFIED SERVICES

The Parties agree that due to uncertainties relating to various technical and operational feasibility and other business factors, the following Services are provided by BST to BSLD and Clients on a trial basis only for a period of 120 days from the effective date of this Agreement. At the end of the trial period BST will evaluate the technical, operational, and other business considerations pertaining to the trial of those Services in order to determine at that time whether and to what extent BST is willing to continue offering any or all of the Services covered by this Section. Before the end of the 120 day trial period, BST shall provide BSLD with a 30 day advance notice, in writing, of its intent to continue or decline provision of those Services. Likewise BSLD shall provide BST with a 30 day advance notice, in writing, of its intent to continue to receive or to decline such Services. Services governed by this section are set forth below:

1. Processing BSLD's Client Messages with a unique CIC or ABEC.
2. Changing BSLD and/or Clients' data in their EMI records; e.g., changing the charge amount in the record and summing DA and DACC service records so that one DA/DACC Message/charge prints on the bill page.
3. Customizing headings on both BSLD's clearinghouse bill page and non-clearinghouse bill page.
4. Printing text messages anywhere on BSLD's

- non-clearinghouse bill page.
- 5. Answering end-user questions regarding BSLD and/or Clients' rates and rate structures as they relate to charges on the bill.
- 6. Providing additional breakdown of BSLD's revenue and recourse moneys on the Settlements statement and data file.
- 7. Providing a non-standard Journal data file (i.e., Journal reporting customized for BSLD), and delivering such data file electronically to BSLD by the fifth business day of each month.
- 8. Allowing BSLD to perform more than one audit and one examination per 12-month period.
- 9. Provisioning the "I" column indicator with BSLD and/or Clients' net bad debt moneys.
- 10. Providing Bill/Rate Verification for Client charges.
- 11. Calculating and applying all applicable taxes to BSLD and Client service charges.
- 12. Translating BSLD and/or Client-provided English text into Spanish text, when requested by BSLD, for Spanish bills.

#### 6. SERVICE DEPOSIT, PBA THRESHOLD, AND SETTLEMENT ALLOWANCE.

A. In accordance with Exhibit A, Part One, Section 4., BSLD's Billing & Collection (B&C) Service Package cash deposit amount is \$150,000.00 at the time of Service establishment.

B. In accordance with Exhibit A, Part Three, Section 15.5., in regard to BSLD and Clients' purchase of accounts receivable, the cumulative Post-Billing Adjustment Threshold percentage is 5%, per CIC and ABEC, at the time of Service establishment.

C. In accordance with Exhibit A, Part Four, Sections 19.8. and 20.8 ., at the time of Service establishment BSLD's Settlement Allowance percentage is 5%, per CIC and ABEC, and shall be withheld for nine months beginning with the first Settlement.

#### 7. PURCHASE OF ACCOUNTS RECEIVABLE

A. As provided for in the State Tariffs and Exhibit A and as described in Appendix A, BST shall purchase from BSLD its accounts receivable who are also BST's end users subject to recourse. BSLD warrants that BSLD (1) has title to its accounts receivable purchased by BST, and/or (2) BSLD's Clients have the title to the accounts receivable purchased by BST and BSLD has the authority as agent for and on behalf of Clients, to sell and convey all such accounts receivable to BST free from any security interest therein or encumbrance thereof. BSLD and Clients agree or shall agree before sending any Messages to BST for processing, not to assign, transfer, sell, exchange, give, or grant any security interest in the accounts

receivable to any other entity or person, and any such grant assignment, transfer, sale, exchange, or gift is null and void.

## 8. TREATMENT AND COLLECTION

In collecting amounts due for BSLD and Clients services, BST shall use the same treatment, collection, and (where authorized by the appropriate regulatory authority) denial of service procedures as BST uses for its own services.

## 9. TAXES

### *A. Taxes and Surcharges*

All Taxes including, but not limited to, federal, state or local sales, uses, excise, gross receipts or other receipts, or other taxes or tax-like fees (including tariff surcharges) imposed on or with respect to BSLD's services, excluding however, ad valorem property taxes, state and local privilege and license taxes based on gross revenue, taxes measured by net income, and any taxes or amounts in lieu of the foregoing excluded items, are hereinafter collectively referred to as "Tax" or "Taxes", unless otherwise specifically named.

### *B. Taxes – Billing & Collection Service Package*

1. For the B&C Service Package, BST shall compute, bill to, and collect from its end users applicable Taxes, including Foreign state taxes, and remit such Taxes to BSLD through the Purchase of Accounts Receivable process. BST shall use the same tax practice and procedures (including exemption procedures) to apply Taxes on similar or comparable BST services, unless notified in writing by BSLD to do otherwise. BST shall implement any legislated tax law or tax rate changes into its procedures as required by applicable tax law for services billed by Company. BSLD shall give BST instructions for application of Taxes for new services in the form of an Open Billing Request ("OBR"). BSLD shall provide BST with written notification of any taxes and/or taxing requirements that may apply to it and not to BST, including, but not limited to, those taxes and/or taxing requirements covered by agreements with the taxing authority(ies).
2. BST shall furnish to BSLD, on a timely basis, all information and reports in its possession reasonably necessary for BSLD to file its Tax returns within the applicable filing period, according to the format and delivery schedules outlined in Appendix A, and BST's operating procedures. BSLD may request modifications to BST tax reporting via an OBR. BSLD shall be responsible for filing all returns for all of its such Taxes to the applicable taxing

- authorities; BST shall have no responsibility for filing BSLD Tax returns or paying its Taxes to the taxing authorities.
3. BST shall use the same tax exemption status with respect to BSLD's end users as it does for its own end users, and, when requested by BSLD, furnish copies of such information as may be in its possession regarding tax exemptions of end users. BST shall maintain information regarding tax exemption status of BSLD's end users in a reasonable, accurate, and complete manner. End-user status information shall be maintained by BST in the same manner as it would maintain records for its own end users. BSLD may review information relating to end-user Tax exemption status and request that BST change Tax exempt status with respect to BSLD's services as mutually agreed upon by the tax departments of both companies.
  4. BST is responsible for implementing any legislated Tax rate changes on Taxes currently being charged to end users on BSLD's behalf which are also being billed for BST's end users.
  5. BSLD has the right to review BST's tax procedures and supporting documentation, and BST shall supply BSLD with such documentation upon request by BSLD at a mutually agreeable location. BSLD may request BST to change its tax procedures with respect to applying and billing Taxes via an OBR.
  6. BST shall not remit Taxes to BSLD when it is not able to do so as a result of legal restrictions; however, BSLD reserves the right to challenge such determination.
  7. BST shall not be entitled to retain or receive any statutory fee or share of Taxes that the person collecting or remitting such Taxes is entitled under applicable law.
  8. BST, as directed by BSLD, shall be responsible for calculating and billing any foreign states' taxes associated with a jurisdiction where the call originates in a state other than the billing state or where BST local jurisdiction information is not available.
  9. All communications with taxing authorities regarding Taxes applicable to BSLD shall be the responsibility of BSLD.
  10. BSLD understands and agrees that BST is merely providing a service with respect to the collection of Taxes hereunder.
  11. BSLD shall file all Tax returns and pay or remit all such Taxes to the imposing authority.
  12. BST service contact representatives shall accept and resolve end-user BSLD Tax inquiries in accordance with its existing service procedures.

*C. Taxes -- Indemnity and Recourse*



1. BST agrees to pay and hold BSLD harmless from and defend, at BST expense, BSLD from and against any liability or loss resulting from Taxes, penalties, interest, additions to Tax surcharges, or other charges or payable expenses (including reasonable attorney's fees) incurred by BSLD as a result of the willful misconduct or gross negligence of BST to accurately calculate and bill Taxes as instructed by BSLD. Such indemnity shall be provided to BSLD on an after tax basis.
2. BSLD shall indemnify, hold harmless, and defend (at BSLD's expense) BST from and against any liability or loss resulting from any Taxes, penalties, interest, additions to Tax surcharges, or other charges or payable expenses (including reasonable attorney's fees) incurred by BST as a result of:
  - a. BSLD's failure to pay any Tax or file any return or other information as required by law or this Agreement; or
  - b. BST complying with this Agreement or with any determination or direction by or advice of BSLD provided in writing by BSLD or BST correctly using this information provided in writing by BSLD in performing any Tax-related service hereunder; or
  - c. BST acting or failing to take any action with respect to any Tax which is the subject of the Agreement.

Such indemnity shall be provided to BST on an after tax basis.

3. Notwithstanding the above, such indemnity is conditioned upon BST providing BSLD or BSLD providing BST with notice (which notice shall be given allowing the Party time to file a response, but in no event more than 10 business days of receipt of assessment) of any assessment of any additional Taxes, penalties or interest due with respect to this Agreement. BST shall receive a copy of all filings in any such preceding, protest or legal challenge, all rulings issued in connection therewith and all correspondence between BSLD and the taxing authority.
4. If BSLD disagrees that any Taxes are payable by BST, disagrees with an assessment of any additional Taxes, penalties, interest, additions to tax surcharges, or other charges or payable